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## Pensions

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## PENSIONS

*Guidry v. Sheet Metal Workers National Pension Fund*, 856 F.2d 1457

Appellant Guidry, a trustee of the Sheet Metal Workers Pension Fund (Fund), embezzled \$377,000 from the Sheet Metal Workers International Union (Union). Guidry sued after he was denied early retirement benefits.

The Tenth Circuit affirmed the order compelling Guidry's pension funds to be placed in a constructive trust and paid to the Union. The court held that the Union, as a beneficiary of the trust, could compel repayment of losses to the trust resulting from Guidry's breach of duty as trustee. Because Guidry was also a beneficiary of the trust, repayment out of his beneficial interest was proper. The court also held that Guidry's failure to comply with Colorado's garnishment procedures denied him the protections of the Consumer Credit Protection Act, 15 U.S.C. § 1673.

*Anderson v. Emergency Medicine Associates*, 860 F.2d 987

Plaintiff appeals from the district court decision in favor of the defendant. The issue on appeal is whether the district court correctly held that Emergency Medicine Associates' (EMA) retirement plans did not partially terminate on March 1, 1979, when the plaintiff voluntarily quit working for the EMA. If the plan partially terminated, plaintiff is entitled to 100% of EMA's contributions to his retirement account. If the plan did not partially terminate, plaintiff's rights to the EMA contributions are forfeited.

Plaintiff contends that partial termination occurred within the meaning of 26 U.S.C. § 411(d)(3) (1982) when a significant percentage of the plan's participants, in this case 50%, left employment with the EMA, regardless of whether the participants left voluntarily or were dismissed. This court held that partial termination, under *Sage v. Automation, Inc. Pension Plan and Trust*, 845 F.2d 885 (10th Cir. 1988), only occurs when there is a substantial reduction in plan participants attributable to involuntary exclusions or employee terminations, not including voluntary employee decisions of resignation. Affirmed.

*Straub v. Western Union Telegraph Co.*, 851 F.2d 1262

Appellant Straub appeals a summary judgment based on the grounds that no liability can exist under the Employee Retirement Income Security Act (ERISA) for purported oral modification of a written pension plan. Affirmed.

In affirming the district court decision, the court of appeals noted that ERISA § 514(a) preempts all state law claims relating to an employee pension plan, and that the ERISA requirement that all plans be

maintained in writing bars all attempted oral modifications to a pension plan.

*Trustees v. Morgan & Oswood Const. Co.*, 850 F.2d 613

Appellant Morgan & Oswood Const. Co. appeals a district court judgment finding it liable for benefit payments required by a collective bargaining agreement during the time the agreement was in effect, despite the fact Morgan & Oswood repudiated this agreement two years after it was signed. Affirmed.

Morgan & Oswood claimed this action was barred by the six month statute of limitations for "hybrid" labor actions, or by the two year Wyoming statute of limitations for actions seeking to impose liability based on a federal statute. In dismissing these arguments, the court of appeals noted the six month limit applied only to federal "hybrid" actions between employers and employees, and that the trustees of a union pension plan are not "employees." The two year limit was disregarded on the grounds it discriminated against a federal cause of action. The court instead held that the appropriate statute of limitations was the 10 year limit found in Wyoming law for written contract disputes.

*Sage v. Automation, Inc. Pension Plan and Trust*, 845 F.2d 885

Plaintiff appeals from a district court decision in favor of the defendant which held that a partial termination of pension and profit sharing plans did not occur, thus denying plaintiff's entitlement to full vesting of amounts credited to its plan accounts. Affirmed in part, reversed in part, and remanded.

Plaintiff argues that the pension and profit sharing plans of Automation did not comply with the Employment Retirement and Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001 to 1461, and the Internal Revenue Code. Plaintiff maintains that his departure from Automation was a partial termination of the plan, entitling him to full vesting of amounts credited to his plan; and that the plan failed to provide an adequate claims denial procedure and that such failure constitutes a breach of fiduciary duty on the part of the plan's trustee. When the plaintiff voluntarily departed from employment with Automation he was granted partially vested benefits, but was denied full benefits as the trustee determined there to be no partial termination of the plan. The trial court concluded that a partial termination of the plan had not occurred.

On appeal, plaintiff contends that partial termination occurs whenever there is a substantial reduction in plan participants in connection with a significant corporate event, and cannot be determined based on whether or not an employee voluntarily left an employer. This court denied such a contention and held that partial termination only occurs when there is a substantial reduction in plan participants attributable to involuntary exclusions or involuntary employee terminations.

The court of appeals held the claims review procedure to be defi-

cient. It failed to comply with 29 C.F.R. §§ 2560.503-1(f)(3) and (4), which provide that appropriate information must be provided to allow the claimant to perfect his claim prior to submission of this claim for review. The opinion failed to provide a reasonable opportunity for a full and fair review of the denial of a claim. However, this court found that the procedural defects do not require reversal on the partial termination issue.

On remand, the district court should consider the issue of attorney fees because of the legal determination that the claims review procedure was inadequate.

